IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL **[LODGING]** NO.178 OF 2007
IN
SUIT NO.1022 OF 1984

M/s. Sangatarash International
& Ors. .... Appellants
Vs.
Daulatram Chelaram Bakhru .... Respondent

Shri S.N. Vimadalal i/b M/s. Vimadalal & Co. for the Appellants.

Ms Kavita Shah i/b Shri A.G. Shah for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATED: MAY 03, 2007

P.C:

1. Heard. In terms of the order dated 4-4-2007 passed in the Notice of Motion No.830 of 2007, the appeal has been fixed for final disposal at the admission stage by consent of the other party. Accordingly, the appeal is taken up for final disposal at the admission stage itself.

2. Admit. Shri A.G. Shah waives service on behalf of the respondent. By consent, heard forthwith.

3. This appeal arises from the order dated 14-2-2005 passed in Suit No.1022 of 1984 purportedly in exercise of powers under Order 8, Rule 10 of the C.P.C.. The

impugned order reads thus:

> "None for the defendants, though served. Affidavit of service is on record. The defendants have not filed any written statement. No one has been appearing for defendants. Hence the matter was kept for ex parte. Plaintiffs have filed affidavit of documents and compilation of documents. The same are taken on record.
>
> In view thereof there will be a decree under Order VIII Rule 10 in terms of prayer clause (a) and (b) of the plaint against the defendants. Suit to stand disposed of with no order as to costs.
>
> C.C. expedited."

4. At the outset, a preliminary objection is sought to be raised on behalf of the respondent for non-maintainability of the appeal on the ground that two partners of the appellant No.1 partnership firm have not been joined as the parties to the appeal and the appeal has been filed by only two of the partners, though the partnership firm has four partners and all of them were

joined as the parties to the suit.

5. As regards the objection about non-maintainability of the appeal on the ground that all the partners have not been joined as party-appellants or respondents to the appeal, it needs to be noted that the appeal has been filed by the firm represented by two of its partners. The Sections 18 and 19 of the Indian Partnership Act, 1932 clearly authorise a partner to act as an agent of the firm and to file appeal on its behalf. Rule 1 of Order 30 of the Code of Civil Procedure lays down that one or two more persons claiming as partners may sue or be sued in the name of the firm. Thus an appeal can be filed on behalf of the firm by any of its partner or partners. The firm is merely a compendious name for all the partners. In **M/s. Malabar Fisheries Co. v. The Commissioner of Income-tax, Kerala,** reported in AIR 1980 SC 176, the Supreme Court approved the passage in Lindley on Partnership which states that partners are collectively called as a firm. Following the decision of the Supreme Court in **M/s. Malabar Fisheries'** case (supra) one of us (D.G. Karnik, J.) in **American Dry Fruit Stores v. ADF Foods Limited,** reported in 2006 (3) Bom.C.R. 837 has held that when a suit (proceeding) is instituted in the name of a partnership firm, it is in fact a suit filed by all the partners as the firm name is merely a

compendious name for all the partners. As the present appeal is filed by and in the name of the firm, it is filed by all the partners of the firm. Being so, the preliminary objection that the appeal is not maintainable on the ground that all the partners have not been impleaded as parties to the appeal must fail.

6. As regards the impugned order is concerned, it apparently discloses that though the Court proceeded to exercise the powers in terms of Order 8, Rule 10 of the C.P.C., the learned single Judge failed to pass the judgment within the meaning of the said expression under the said provisions of law r/w Section 2(9) of the C.P.C.. The provisions of law comprising under Order 8, Rule 10 of the C.P.C. clearly requires the Court to pass a judgment while exercising powers under the said provisions of law. Mere observation that the decree is passed under Order 8, Rule 10 in terms of the prayer clause does not amount to passing the judgment as is otherwise required to be passed under the said provisions of law. This aspect has been discussed in detail in the following judgments:

(i) **Balraj Taneja & Anr. v. Sunil Madan & Anr.,** reported in (1999) 8 SCC 396.

(ii) **All India Central Bank Employees Congress, a**

trade Union & Ors. v. Central Bank of India, reported in 2007 (3) AIR Bom.R 214.

Unreported decisions in:

(iii) **Municipal Corporation of Greater Mumbai & Ors. v. Azharali Anwarali Sambhalwala,** delivered on 30-3-2007 in Appeal No.152 of 2007 in Suit No.2302 of 1992.

(iv) **Pravinkumar Khimji v. Mrs. Hansa Kantilal alias Kalpana Kantilal & Ors.,** delivered on 20-4-2007 in Appeal No.761 of 1999 in Suit No.3423 of 1991.

7. For the reasons stated in the decisions stated above, and as the impugned order nowhere discloses compliance of the provisions of law comprised under Order 8, Rule 10 of the C.P.C., the same cannot be sustained and is liable to be set aside and the matter remanded to the learned single Judge to decide the Suit No.1022 of 1984 in accordance with the provisions of law afresh. Order accordingly. The appeal stands disposed of with costs of Rs.1,000/-, to be paid by the appellants to the respondent.

8. Liberty to the parties to move for expeditious

disposal of the suit by the learned single Judge.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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